



**HASBANI &
LIGHT, P.C.**
ATTORNEYS AT LAW

Rafi Hasbani, Esq.

450 Seventh Ave
Suite 1408
New York, NY 10123
T. 212.643.6677
F. 347.491.4048
rhasbani@hasbanilight.com

April 19, 2023

VIA ECF

The Honorable Judge Dunst
100 Federal Plaza,
Central Islip, NY 11722

RE: Case No. 2:22-cv-05422-GRB-LGD
Blue Castle (Cayman) Ltd. v. Wickapogue 1, LLC, et. al
Subject Property: 145 Wickapogue Road, Southampton, NY 11968

Dear Judge Dunst:

My firm represents Blue Castle (Cayman) Ltd. (“Plaintiff”) in the referenced action. This letter is submitted to provide the status of the action pursuant to Your Honor’s order dated March 29, 2023. This letter is filed jointly through the attorneys of Plaintiff and Defendants WICKAPOGUE 1, LLC NICOLE GALLAGHER, MARK GALLAGHER, TITLE, LLC and ST. ANDREWS CAPITAL, LLC. Each of the below paragraph correspond to the items listed in the March 29, 2023 order.

- 1) Defendant Wickapogue 1, LLC (“Wickapogue”) filed for chapter 11 bankruptcy on March 28, 2023. The case is filed under docket number 8:23-bk-71048. There is an initial case management conference scheduled for May 8, 2023.
- 2) Since Defendant filed for bankruptcy, the automatic stay pursuant to 11 U.S.C. § 362 is triggered. As the Bankruptcy Court explained in *In re Salov*, 510 B.R. 720 (Bankr. S.D.N.Y. 2014):

The automatic stay is “one of the fundamental debtor protections provided by the bankruptcy code.” It is effective immediately upon the filing of a bankruptcy petition without further action. The filing also creates an estate consisting of “all legal or equitable interests of the debtor in property” at the time of filing as well as other property that may be recaptured during the bankruptcy. The scope of the stay is broad, encompassing “almost any type of formal or informal action taken against the debtor or the property of the [bankruptcy] estate,” including this foreclosure action.

Id. at 726 (internal citations omitted).

Since the stay encompasses “almost any type of formal or informal action taken against the debtor or the property of the [bankruptcy] estate,” the automatic stay must be applied to the 22-cv-05422 action and the 23-cv-561 action. Given that both actions involve the property of Wickapogue, said property is now under the jurisdiction of the

Bankruptcy court. Specifically, with regard to the 22-cv-05422 action, Plaintiff cannot extinguish the rights of a junior lien holder until a foreclosure sale has occurred. RPAPL 1353, *Dime Sav. Bank of New York, FSB v. Kakar*, 203 A.D.2d 50 (1st Dept. 1994).

Moreover, Plaintiff cannot pursue a deficiency against Nicole Gallagher and Mark Gallagher under the personal guaranty until a foreclosure auction is held. Plaintiff cannot get to the stages of a foreclosure auction until it proves its prima facie case for a default by the borrower. *R.B. Ventures, Ltd. v. Shane*, 112 F.3d 54, 59 n.2 (2d Cir. 1997). Since Plaintiff cannot move against the borrower, Wickapogue, Plaintiff cannot pursue the action against any of the other defendants; therefore, the actions must be stayed.

- 3) At this time, Wickapogue 1, LLC, Nicole Gallagher, Mark Gallagher, Hugh Bauers Contracting, Inc. Lisa Grossman And Bryan Geffen are all subject to the clerk's entry of default. See Docket Entries No.: 10, 30 and 43. None of the aforementioned defendants have filed an answer in this matter. Only Title, LLC and St. Andrews Capital, LLC have filed an answer, however, their answers do not contest Plaintiff's right to foreclose.
- 4) Blue Castle (Cayman) Ltd. has not filed an answer in the 23-cv-561 action because it has yet to be served with the summons and complaint. Wickapogue's attorney in the aforementioned actopm has been notified of same. See **Exhibit A**.
- 5) It is the parties understanding that with the bankruptcy being filed, both actions are stayed. See paragraph 2. With the bankruptcy court having jurisdiction over Wickapogue and its assets, neither action should proceed. Moreover, in 22-cv-05422 all parties are in default and in 23-cv-561, Blue Castle has not yet been served with the complaint.
- 6) At this time there are no outstanding issues. Should additional issues arise, they will be brought to the court's attention.

Thank you for your time and attention to this matter.

Very truly yours,

/s/ Rafi Hasbani
Rafi Hasbani, Esq.